Consolidated Freightways *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO *and* Frank Centi. Cases 34–CA–4479 and 34–CB–1243

May 15, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On September 21, 1990, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent Employer and the Respondent Union each filed exceptions and a supporting brief. The General Counsel filed cross-exceptions and a supporting and answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The question before us is whether the Respondent Employer violated Section 8(a)(1) and (3) and the Respondent Union violated Section 8(b)(1)(A) and (2) by awarding Shop Steward Alphonse Alba a preferential starting time in accordance with the parties' contractual superseniority provision.

I. FACTUAL FINDINGS

The Respondent Employer employs approximately 18 unit employees whose shift starting times are determined by seniority. The Respondent Employer periodically posts a bid list of available starting times and the number of openings for each such shift. Employees, with the sole exception of the union steward, sign up in descending order of seniority. When the steward—the only person regularly present at the facility who has grievance handling responsibilities for the Union—signs the bid lists, he has available to him the following contractual provision for departure from natural seniority:

> The Union Steward shall be accorded Super Seniority with respect to terms and conditions of employment for layoff and recall purposes only, and in other situations that assure the Steward greater accessibility to co-workers to genuinely assist him to perform his functions as a Steward which will be to the benefit of co-workers.

On October 18, 1989,[1] the Respondent Employer posted a bid sheet listing five 3 a.m., six 8 a.m., and five 9 a.m. starting slots for the period beginning October 22. The bid sheet posted on November 8 for the period beginning November 12 listed five 3 a.m., seven 8 a.m., and five 9 a.m. starting slots.[2] With respect to both of these work periods, Shop Steward Alphonse Alba invoked the superseniority clause in the collective-bargaining agreement to obtain an 8 a.m. starting time when otherwise, based on his natural seniority alone, he would have been required to relinquish that opportunity in favor of employee Frank Centi and to work the 9 a.m. shift.[3]

Drivers on the 8 and 9 a.m. shifts punch in during the 15 minutes preceding the start of their shifts and spend, on the average, another 15 minutes at the dispatch window waiting for their assignments. They then either leave within 10 or 15 minutes or, if their trucks are not loaded, spend some dock time loading before commencing their runs. The record shows that the employees on the 3 a.m. shift, who perform both dock work and driving, generally take their lunchbreaks between 8 and 8:30 a.m. and then, on the average, leave the facility for their driving runs sometime after the 9 a.m. drivers have left.

II. ANALYSIS AND CONCLUSIONS

The complaint alleges that the Respondents violated the Act both by maintaining the superseniority clause in their collective-bargaining agreement and by enforcing it on the specified dates to Alba's benefit. For the reasons set forth below, we agree with the judge that the clause is not unlawful on its face, but we disagree with his finding that its application on October 18 and November 8 constituted a violation of Section 8(a)(3) and (1) and Section 8(b)(1)(A) and (2).

1. Since the contract clause on its face permits the steward to invoke superseniority for purposes beyond layoff and recall, and since it sanctions job-related discrimination based on union activity, it is presumptively illegal under *Dairylea Cooperative*,[4] The burden of rebutting this presumption rests on the parties asserting its legality and here requires the Respondents to produce evidence that their provision for superseniority ''in other situations'' is justified by the policies of the Act.

With respect to the facial lawfulness of the clause in issue, we find that the parties have met their *Dairylea* burden through the language limiting the steward's entitlement to superseniority in situations other than layoff and recall. The restriction of superseniority to only those ''other situations'' that

[1] All dates are in 1989.

[2] There was also one slot on each of the three remaining shifts: 12 noon, 1 p.m., and 2 p.m.

[3] The record supports the judge's finding that for the relevant period the drivers on the 8 a.m. shift averaged more overtime than those on the 9 a.m. shift.

[4] 219 NLRB 656 (1975), enfd. sub nom. *NLRB v. Teamsters Local 338*, 531 F.2d 1162 (2d Cir. 1976).

''assure the Steward greater accessibility to co-workers'' for the performance of his duties, which include grievance handling, is clearly intended to, and does, further the effective administration of the parties' collective-bargaining agreement. Since Alba is the only steward for a multishift work force, he can better serve the overall unit by working a shift that provides him contact with a greater number of employees than would the shift to which he would be assigned by the use of natural seniority. *Auto Workers Local 1331 (Chrysler Corp.)*, 228 NLRB 1446 (1977).[5]

2. Turning now to whether the applications of the superseniority provision were lawful, we find, contrary to the judge, that they were. Alba used his superseniority to work the 8 a.m. shift, rather than the 9 a.m. shift to which he would have been assigned by the use of natural seniority. As shown below, he would serve more employees by working the 8 a.m. shift than by working the 9 a.m. shift. Concededly, he could have served even more employees by working the 3 a.m. shift. However, the fact that he did not use his superseniority to work that shift does not render unlawful the application of the superseniority clause. It is sufficient, for *Dairylea* purposes, that superseniority was used to enhance the Union's ability to represent employees. The fact that it was not exercised to enhance that ability to *the maximum* extent possible does not render the exercise unlawful.[6]

Thus, we now examine the record to determine whether Alba's use of superseniority on the two dates in question met this comparative degree standard—i.e., did Alba have access to a greater number of employees on the 8 a.m. shift than he would have had on the 9 a.m. shift.

On the 8 a.m. shift Alba had the opportunity to consult with either five or six other employees on that shift for the half hour between clocking in at 7:45 a.m. and receiving driving assignments at 8:15 a.m. Since the 3 a.m. combination employees generally take their lunchbreak between approximately 8 and 8:30 a.m. Alba had access to these five employees for at least a portion of that period. Thus, on Alba's preferred 8 a.m. shift he had reasonable access to approximately 10 or 11 employees for grievance handling purposes. With respect to the 9 a.m. shift, however, on the days in question Alba would have had pre-assignment access to only four other employees on that shift and with an 8:45 a.m. arrival time he would not have been able to consult with any of the 3 a.m. shift employees during their usual breaktime. Accordingly, we find that Alba's use of superseniority in these instances met the parties' lawful ''greater accessibility'' standard.[7] We shall therefore dismiss the allegations that the Respondent Employer and the Respondent Union violated Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2), respectively.

ORDER

The complaint is dismissed.

[5] We find no merit in the General Counsel's cross-exception to the judge's failure to find that the clause is unlawful because it does not, by its terms, limit superseniority for shift preference to situations ''essential'' to the Union's grievance handling responsibilities. In this case the presence of a steward on any *particular* shift is not necessary or ''essential'' to meeting overall grievance handling duties. However, as the Board stated in *Auto Workers Local 1331*, supra at 1447, as to superseniority for shift preference ''. . . strict necessity in not the determinant; the determining factor is the purpose.'' Here increased accessibility to unit employees is a purpose that satisfies the *Dairylea* standard.

[6] Thus, it is not necessary to determine whether the parties met the superlative degree standard created by the judge, under which he found that Alba would have been required to select the 3 a.m. shift in order to secure the ''greatest'' access to employees.

[7] We note that the difference between the 8 and 9 a.m. shifts with respect to numbers of employees to whom Alba would be readily available is not unsubstantial. Nothing in this decision is intended to suggest that union stewards may exercise special shift preferences where only minimal or sporadic differences in employee accessibility are shown.

Thomas Doerr, Esq., for the General Counsel.
William C. Lynch, Esq. (Lynch, Traub, Keefe & Errante), for Respondent Employer.
Burton Rosenberg, Esq. (Zolot & Rosenberg), for Respondent Union.

Statement of the Case

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on May 21, 1990, in Hartford, Connecticut. The consolidated complaint and notice of hearing issued on December 8, 1989,[1] and was based upon unfair labor practice charges filed on October 24 by Frank Centi, an individual. The consolidated complaint alleges that since about April 1988, Consolidated Freightways (Respondent Employer) and Local 443, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (Respondent Union) (at times, collectively called Respondents) have maintained a collective-bargaining agreement providing for superseniority for the shop steward; Respondents admit this much of the consolidated complaint. The consolidated complaint further alleges that on about October 18 and November 8, and on other dates presently unknown, Respondent granted Alphonse Alba, the shop steward, superseniority and a preferential starting time when it was not essential to Respondent Union's grievance handling responsibilities. This is alleged to violate Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2) of the Act.

On the entire record, including the briefs filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Employer, a Delaware corporation with an office and place of business located in Milford, Connecticut (the facility), is engaged in the transportation of freight. During the 12-month period ending November 30, Respondent Employer, in the course and conduct of its business oper-

[1] Unless indicated otherwise, all dates referred to relate to the year 1989.

ation, derived gross revenue in excess of $50,000 from the transportation of freight and commodities in interstate commerce. Respondents admit, and I find, that Respondent Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent Union admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

Respondent Employer employs approximately 18 regular unit employees at the facility; 17 of these employees are pickup and delivery drivers. The remaining employee performs only dock work. Alba is the only shop steward at the facility. Respondent employs a business representative, Robert Bayusik, who covers the facility, as well as other employers' locations. He testified that the ''normal process'' is for the steward to handle the employees' grievances at the first step. If the steward cannot resolve it at that stage, then Bayusik will become involved and discuss the grievance with the terminal manager. On occasion, when the steward was on vacation, Bayusik has handled a grievance without the steward first being present. If Bayusik was given the grievance directly at a time when the steward was present, Bayusik would tell the employee to first discuss it with the steward who would initially address it.

The contract between Respondent Employer and Respondent Union contains the following provision:

> The Union Steward shall be accorded Super Seniority with respect to terms and conditions of employment for layoff and recall purposes only, and in other situations that assure the Steward greater accessibility to co-workers to genuinely assist him to perform his functions as a Steward which will be to the benefit of co-workers.

There are a number of different shifts at the facility; Respondent Employer posts a bid list of the available times and the number of openings for each. The employees sign the list designating the shift they choose. Seniority determines who gets which shift. Centi has greater seniority than Alba (absent the superseniority provided for in the agreement, of course). The principal shifts begin at 8 a.m. and 9 a.m. On the October 18 bid list, there were six ''slots'' for the 8 a.m. shift; there were seven ''slots'' on the November 8 bid list for this shift. There were five ''slots'' for the 9 a.m. shift on both of these dates. The next most populated shift begins at 3 a.m.; the employees beginning on this shift are ''combination'' employee—drivers/dockmen. There were five slots[2] for this shift on the weeks in question. The remaining starting times were 12 noon, 1 p.m., and 2 p.m. for the weeks in question. One employee worked on each of these shifts during the periods in question.

The genesis of this matter occurred on October 18 and November 8. On each of these days, Centi attempted to sign the bid list for an 8 a.m. slot and on each occasion, he was bumped by Alba who used his contractual superseniority to obtain the 8 a.m. starting time. As a result, Centi obtained a 9 a.m. starting time on each of these weeks. Centi filed grievances with the Union regarding being bumped by Alba, but they were rejected by the Union on the ground that Alba was given the 8 a.m. shift to be most accessible to the employees at the facility.[3]

The 3 a.m. Shift

As stated, supra, with the exception of the one dockman, the remaining employees on this shift (four on the dates in question) are combination employees performing both dock work and driving. Beginning when they arrive, they handle inbound freight and load the trucks at the facility. These are the trucks that will be driven by the 8 a.m. and 9 a.m. drivers, as well as other trucks. When they are finished loading the trucks, some, or all of them, will take out trucks themselves. The order in which they go is determined by seniority; the most senior of these combination men is given the opportunity to go out first. The witnesses' testimony varied on when these combination men usually leave the facility and go on the road; Centi testified that they leave at 9 a.m. ''most of the time.'' Employee James LaVelle testified that the combination men usually spend 5 or 6 hours a day at the facility before leaving on their runs. John Demke, Respondent's terminal manager at the facility, testified that these combination men go out on the road, generally, between 7:30 and 8:30 a.m. Respondent's payroll records[4] establish that a total of 136 employee shifts were worked during this 6-week period beginning at 3 a.m. or 10 p.m. on Sunday. With the exception of the dockman who did no driving during this period about 95 percent of these shifts involved both dock work and driving. The calculations from these payroll records establish that (excluding the dockman's shifts and the Sunday 10 p.m. shift) the average amount of time the employees spent doing platform work on each shift was 6 hours 20 minutes. Although not as critical, the average amount of time these 3 a.m. shift employees spent on driving duties per day during this period was 3 hours. Using these calculations, during this 6-week period, on the average, the employees on this shift (again excluding the dockman's shifts and the Sunday 10 p.m. shifts) left the facility to go on their runs at 9:50 a.m., and returned and clocked out at 12:50 p.m. These records also reveal that (with the same exclusions) approximately 60 percent of those shifts involved dock work of 6 hours or more resulting in these employees being present at the facility at 9 a.m. or thereafter.

[2] Four of these employees begin at 3 a.m., Monday through Friday; one (the employee who performs only dockwork) begins at 10 p.m. on Sunday, and 3 a.m., Tuesday through Friday.

[3] It was initially not very clear what detriment Centi suffered if any, by being bumped. He testified that the 8 a.m. shift is preferable because you can gain an hour a day of pickups and, presumably, an additional hour's pay each day. Fellow employee Jerry Kard testified that the 8 a.m. shift results in a greater opportunity for overtime. This testimony is supported by Respondent's payroll records (discussed more fully, supra) which establish that for the period involved the employees on the 8 a.m. shift averaged 9 hours 40 minutes per shift, while the employees on the 9 a.m. shift averaged 8 hours 48 minutes.

[4] Received in evidence were Respondent's payroll records for 8 weeks, beginning the week ending October 21. The calculations that follow are from the first 6-weeks' payroll records (the week ending October 21 through the week ending November 25) which I found to be a representative sample. These payroll records were useful because (for Respondent Employer's payroll purposes) each employee's time is separated into driving time and platform time.

The 8 a.m. Shift

This is the largest shift at the facility; Respondent's payroll records establish that for the 6-week period in question, there were 196 employee shifts worked on this shift. These drivers punch in between 7:45 and 8 a.m. and then congregate at the dispatch window at the facility where they are given their assignments for the day, which is contained in the driver manifest. On the average, they spend 10 to 15 minutes at the dispatch window. If the trailer is already loaded, which is usually the case, the drivers place a hand truck in the trailer, close the trailer door, hook up the trailer to the tractor, and proceed from the facility to their first delivery. This takes, on the average, an additional 10 to 15 minutes. If their trailer is not loaded, they load their own trailer and the time spent doing this is listed on the payroll records as dock (or platform) time. After returning to the facility in the late afternoon, the drivers usually spend approximately 20 minutes doing the required paperwork prior to clocking out for the day. Respondent's payroll records establish that Respondent Employer's drivers on the 8 a.m. shift averaged almost 9 hours of driving and 40 minutes of dock work per shift during this period.

The 9 a.m. Shift

The work and procedures of the drivers on the 9 a.m. shift is substantially the same as the drivers on the 8 a.m. shift except (obviously) that they begin an hour later and the number of shifts worked on the 9 a.m. shift during this period was about one-half the number of shifts worked on the 8 a.m. shift during this period. According to Respondent's payroll records, the employees on this shift averaged 8 hours 10 minutes of driving and 38 minutes of dockwork, per shift.

The 12 noon, 1 p.m., and 2 p.m. Shifts

There was little testimony about these shifts. However, Respondent's payroll records establish 92 employee shifts worked on these shifts during the 6-week period in question; this breaks down to about one employee per shift (or three total) per day. Additionally, these employees spent substantially more time driving than they did performing dock work.

IV. ANALYSIS

The principal case in this area is, of course, *Dairylea Cooperative*, 219 NLRB 656 (1975). In that case, the contract provided that the steward should be considered the senior employee in the craft in which he is employed, and the steward used this clause to bypass otherwise more senior route drivers to obtain the best route in the area. The Board stated (at 658):

> In reaching the above conclusion, we are aware that it is well established that steward superseniority limited to layoff and recall is proper even though it, too, can be described as tying to some extent an on-the-job benefit to union status. The lawfulness of such restricted super seniority is, however, based on the ground that it furthers the effective administration of bargaining agreements on the plant level by encouraging the continued presence of the steward on the job. It thereby not only serves a legitimate statutory purpose but also redounds in its effects to the benefits of all unit employees. Thus, super seniority for layoff and recall hag a proper aim and such discrimination as it may create is simply an incidental side effect of a more general benefit accorded all employees. It has not, however, been established in this case or elsewhere that super seniority going beyond layoff and recall serves any aim other than the impermissible one of giving union stewards special economic or other on-the-job benefits solely because of their position in the Union. That is not to say, of course, that proper justification may not be forthcoming in some future case involving particular circumstances calling for steward super seniority with respect to terms and conditions of employment other than layoff and recall. Consequently, there is no occasion here for finding super seniority—even that going beyond layoff and recall—to be per ge unlawful. The issue ultimately is one of justification.

In conclusion, the Board found:

> super seniority clause which are not on their face limited to layoff and recall are presumptively unlawful, and that the burden of rebutting that presumption (i.e. establishing justification) rests on the shoulders of the party asserting their legality.

In *Auto Workers Local 1331 (Chrysler Corp.)*, 228 NLRB 1446 (1977), the issue was the legality of the contract clauses giving preference in the assignment of overtime and weekend work to both stewards and committee persons. (The agreement additionally provided for the equalization of overtime, whenever possible.) Because both stewards and committeepersons play an active role in the grievance procedure at the plant, the Board found ''ample justification'' for the clauses in questions, stating: ''Here, the presence of both stewards and committeepersons during overtime is desirable for the efficient handling of grievances, a benefit for all unit employees then at work.''

NLRB v. Teamsters Local 443, 600 F.2d 411 (2d Cir. 1979), involved a company that provided airport limousine service, employing full-time and part-time drivers; the contractual provision involved granted superseniority ''for all purposes.'' Citing *Auto Workers Local 1331*, supra, the court stated that superseniority for shift selection is justified when it is shown that it would provide the steward with greater accessibility to his coworkers, thereby benefiting all his fellow employees. The court found that the evidence established the necessity for the steward to work the early morning trips in order to ''maximize contact with other company employees.'' This was a ''legitimate justification for superseniority as to shift selection.'' In *Gulton Electro-Voice*, 266 NLRB 406 (1983), the Board rejected the standard of some prior Board cases, and found: ''We will find lawful only those superseniority provisions limited to employees who, as agents of the union, must be on the job to accomplish their duties directly related to administering the collective-bargaining agreement.''

In *Auto Workers Local 561 (Scovill, Inc.)*, 266 NLRB 952 (1983), the Board considered the legality of a contract clause providing that specified union officers would be the last person laid off or affected by shift preference. Although the Board found a violation because the duties of the individuals named in the complaint did not involve day-to-day adminis-

tration of the collective-bargaining agreement or any steward-like functions, the Board found (at fn. 9) that this contract clause was presumptively lawful as applied to ''grievance handlers'' with ''steward-like'' functions. The Board reasoned that unlike a true shift preference clause, the clause in *Scovill* was ''defensive in nature'' and was meant to assure that this individual would be able to remain on the shift. The Board reasoned that ''the shift protection clause is akin to layoff protection and the same considerations which lead us to find presumptively lawful steward superseniority for layoff protection similarly mandate that steward superseniority for defensive shift maintenance be found presumptively lawful.''

Initially, it is clear that Alba, as a steward, is a grievance handler, and, in fact, the only present at the facility. The evidence establishes that all grievances must first be handled by him, except when he is on vacation. He, therefore, comes within the Board's language in *Gulton Electro-Voice*, supra, as an individual for whom superseniority may be lawful. The first half of the contract's superseniority provision provides for superseniority for layoffs and recall; this is presumptively valid under *Dairylea*, supra. However, it was the remaining portion of the superseniority clause of the agreement that was employed herein to assist Alba: ''and in other situations that assure the Steward greater accessibility to co-workers to genuinely assist him to perform his functions as a Steward which will be to the benefit of co-workers.'' As it was not meant to protect Alba from layoff, this provision and the granting of super-seniority to Alba on about October 18 and November 8 is not the ''purely defensive superseniority protection'' referred to by the Board in *Scovill*, supra, *Electronic Workers IUE Local 663 (Gulton Electro Voice)*, 276 NLRB 1043 fn. 14 (1985), or *Mechanics Educational Society Local 56 (Revere Copper)*, 287 NLRB 935 (1987); the superseniority exercised in the instant matter was therefore presumptively unlawful. The ultimate issue then is whether Respondents have established that they granted Alba's request to be on the 8 a.m. shift in order to obtain greater accessibility to the employees.

Without his superseniority, Alba would have been on the 9 a.m. shift on the weeks in question; through his superseniority he jumped over Centi and obtained the 8 a.m. shift, which Respondents, and its witnesses at the hearing, claim gave him the greatest accessibility to the employees. Counsel for General witnesses generally testified that the 3 a.m. shift gave the greatest accessibility to the facility's employees. During the two periods in question, there were six or seven drivers on the 8 a.m. shift. These drivers arrived at, or shortly before, 8 a.m., at which time they congregate at the dispatcher's window where they received their manifest listing their deliveries for the day. This takes, on the average, about 15 minutes. On most days, their trailers were already packed and they leave the facility, on the average, at about 8:30. The payroll records establish that, on the average, they did not return to the facility until 6:10 p.m. (9 hours of driving, and 40 minutes of dock work, plus a half hour for lunch). Being on the 8 a.m. shift clearly gave Alba access to the other five/six drivers on this shift and made this access convenient for the 15 minutes that these drivers congregated at the dispatcher's window. In addition to the 8 a.m. drivers, the five combination employees who arrived at 3 a.m. (except for the dockworker who arrives at 10 p.m. on Sunday) are also present at the facility, remaining until, on the average, 9:20 a.m., when they go out on their runs. However, the drivers on the 8 a.m. run have only from 15 to 30 minutes presence at the facility and there is no evidence that the combination employees are in close proximity to the dispatcher's window or Alba's trailer to make them realistically accessible to him during, what in reality, is a very brief period. During the drivers 9 hours out on the road they have almost no access to the other employees.

On the other hand, if Alba had taken the 3 a.m. shift, he would have had access to the other four combination employees on this shift. Because of the nature of this work this access would have been a lot more convenient than the access on the 8 a.m. shift; these employees are loading trucks during a 5-hour period when no other employees are present at the facility. In addition, they have the ability to take their 30-minute lunchbreak together. Additionally, a majority of these employees are still present at the facility after 9 a.m. and a steward on this shift would have access (depending on his rights under the contract) to employees on both the 8 a.m. or 9 a.m. shifts.

In summary, while on the 8 a.m. shift during this period, Alba had easy, but brief, access to the five or six other drivers on this shift, and access, although brief and probably inconvenient, to the 3 a.m. shift employees before leaving the facility as well as possible access to the three employees on the 12 noon, 1 p.m., and 2 p.m. shifts when he returned to the facility. On the other hand, if Alba were on the 3 a.m. shift during this period, he would have had easy access to the 4 other 3 a.m. shift employees, and probably have access, as well to the 11 or 12 drivers on the 8 a.m. and 9 a.m. shift, prior to going out on his run. In addition, on the average, they returned to the facility from their run and clocked out 50 minutes after the 12 noon employee began working and 10 minutes prior to the arrival of the 1 p.m. shift employee. I therefore agree with counsel for General Counsel's witnesses and find that the 3 a.m. shift provided for the greatest accessibility. Although I find that the contract clause herein is not unlawful, I find that Respondents have not sustained their burden to establish that Alba's exercise of superseniority was to assure his greater accessibility to the bargaining unit employees. I therefore find that by the exercise and grant of this superseniority on about October 18 and November 8, Respondents violated Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2) of the Act.

CONCLUSIONS OF LAW

1. Consolidated Freightways is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By granting superseniority to Alphonse Alba over the actual seniority of Frank Centi, Respondent Employer and Respondent Union violated Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2) of the Act.

4. The foregoing are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondents have violated the Act, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that Alba was improperly granted superseniority in order to bypass Centi for bidding for the 8 a.m. shift for the two periods in question, and having found, as well, that the 8 a.m. shift drivers work longer hours and therefore earn more than the 9 a.m. drivers, I shall recommend that Respondents be ordered to jointly and severally make Centi whole for any loss of earnings he suffered during these two periods by being bumped to, and working on, the 9 a.m. shift rather than the 8 a.m. shift, on which he would have been employed during these periods, absent the violation. Backpay shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]